

This document consists of 5  
pages, No. 1 of 2 Copies,  
Series A.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY  
WASHINGTON

Ref. Letter has been

OFFICE OF  
THE DEPUTY DIRECTOR

September 24, 1969

MEMORANDUM

TO: OSD/ISA - G. Warren Nutter  
FROM: ACDA/DD - Philip J. Farley *PA*  
SUBJECT: Treatment of Marginal Waters  
in Seabed Arms Control Treaty

As you are aware from cable traffic from our delegation in Geneva, the Soviet reaction to the counter-draft seabeds treaty we presented them on September 15 highlighted two issues as standing between Co-Chairmen agreement. One of these was a preambular reference to further demilitarization measures, which now seems to pose no insuperable difficulty, since the Soviet delegation has put forward ad referendum the suggestion that we use the phrase "preventing an arms race" on the seabed. This formulation seems innocuous to us, particularly as it is a quotation from the ENDC provisional agenda. This leaves the treatment of historic waters as the remaining important issue to be resolved.

Notwithstanding a broad disclaimer article, the Soviets have indicated they would not accept a baseline provision that would extend coverage to the extensive coastal waters to which they lay claim. In particular, they reject any provision that would open these claimed coastal waters to verification. On the other hand, to agree that these areas of the seabed are exempt from treaty coverage would be inconsistent with the arms control objective of an agreement based on balanced obligations. Notwithstanding the divergent

GROUP 3

Downgraded at 12-year  
intervals; not auto-  
matically declassified.

~~SECRET~~

*I 24934/69*

~~SECRET~~

- 2 -

interests, I believe it may be possible to develop a baseline formula that will adequately protect our security requirements and meet our basic criteria for a balanced arms control agreement and perhaps be negotiable with the Soviets.

The tactical situation in Geneva is that the CCD seems to be willing to remain in session into October if the Co-Chairmen can present an agreed treaty draft in time for the other members of the Committee to discuss it and hopefully to approve it before the dialogue is transferred to the UN. A draft treaty which has CCD backing will be less vulnerable to undesirable amendments in New York. It would also strengthen the CCD's position vis-a-vis the UNGA and the latent threats to convoke the UN Disarmament Commission as a follow-up to the 1968 Non-Nuclear Conference. We believe it is in the US interest to reach a solution with the Soviets on the historic waters question as soon as possible.

We can think of five alternative courses of action to meet the problem and would appreciate prompt consideration by the Department of Defense as to which one best serves our overall interests:

1. 1958 Geneva Baseline Rules Plus Bilateral Understanding on Marginal Waters.

A treaty provision prescribing rules based on the 1958 Geneva Convention and international law for drawing the arms control baselines would be supplemented by a special understanding, expressed in a Soviet declaration or exchange of notes with the US which would state that as to coastal waters whose juridical status in international law is in dispute, the USSR would not act contrary to the

~~SECRET~~

~~SECRET~~  
- 3 -

undertakings of Article I, i.e., the prohibitions of ~~the treaty. This could be paralleled by a US declara-~~tion or note that any action contrary to the treaty in disputed waters could result in US withdrawal from the treaty. This alternative would not attempt to clarify the ambiguities mentioned in the second suggestion, nor would it preclude our taking the position on disputed waters outlined in that suggestion. (Our acceptance of special statement by the Soviets with respect to disputed waters could possibly be used by the Soviets in support of their claims to these waters.)

2. 1958 Geneva Convention Rules.

The baseline provision would prescribe that baselines be drawn "as specified in the 1958 Convention on the Territorial Sea and in accordance with international law". Except for the incorporated reference to "historic bays" in Article 7(6) of the Convention, there would be no other reference to "historic waters", and the ambiguous relationship between the Convention and claims based on "historic title" would not be resolved. On the other hand, if in implementing the baseline provision another party attempted to exclude areas from the coverage of the treaty on the basis of claims not generally accepted in international law, the US would be in a position to reject such exclusion and act accordingly.

3. 1958 Geneva Baseline Rules Plus Declaration Listing Historic Waters.

Instead of a general declaration as described in the first suggestion, we would seek a declaration from the Soviets specifying that certain named waters, whose exclusion would give a strategic advantage to the USSR, would

~~SECRET~~

~~SECRET~~

- 4 -

in fact be covered by the treaty. This would be aimed primarily at obtaining an admission from the Soviets that the Sea of Okhotsk is not included in claimed Soviet waters. While this would clarify the major area of doubt with respect to imbalanced obligations, it has two disadvantages: 2) At the deputy delegation chief-level (Geneva 3386), the Soviets already have informed us that it would take several years to obtain such a declaration; and b) Such a US request could be exploited to cast a shadow on our claim that such waters are high seas. At present we assert our claim over the Sea of Okhotsk, for example, by regular overflights.

4. Prohibition Without Verification.

text

The treaty/would be designed to extend the undertakings of Article I beneath coastal waters claimed on the basis of "historic title", but to extend the right of verification only up to the outer limit of those waters. Since in the final analysis we are not dependent on verification provisions of the treaty, we would incur no unacceptable risks by this formula. On the other hand, this approach would suggest that at least in special circumstances the US is prepared to enter an arms control agreement in which the verification rights do not coincide with the scope of the prohibited activities.

5. Tabling Blank Art. II(1).

We could offer to table a Co-Chairmen sponsored draft with a blank paragraph 1 of Article II, with an accompanying statement that the Co-Chairmen would intensify their efforts to reach agreement on this provision of the treaty. There is some doubt the Soviets

~~SECRET~~

~~SECRET~~  
- 5 -

would agree to this procedure since they refused for 5 months to table an NPT draft with a blank article in 1967. If this were proposed they also might prefer to return to their demilitarization text if a complete text cannot be produced by the Co-Chairmen. However, if they were to agree to tabling a blank Article II(1), we would be likely to find our ally Canada joining the Soviets on the historic waters issue at the CCD. Moreover, many CCD members might cite the failure of the Co-Chairmen to produce a complete draft as evidence of their inability to complete the treaty at the present CCD session and might urge immediate adjournment. This would negate our effort to limit UNGA consideration of the seabeds treaty and also would reflect adversely on the CCD as an institution.

The seabeds underlying the most exaggerated Soviet claims of marginal waters, including the Sea of Okhotsk, constitute less than one per cent of the world's total. The Soviets probably calculate and would be prepared to argue, if there was an open debate about imbalance of areas available for deployment of weapons of mass destruction on the seabed, that the US and its allies possess vastly greater coastlines and marginal waters than the USSR and its allies.

If we are to make any progress in Geneva this fall, it will be important to have one or more concrete proposals to present to the Soviets in the near future. I would be happy to meet with you, or your representative, at your earliest convenience to try to reach a decision on this matter. I think the time element requires us to reach an agreed solution by this Friday, to permit a resolution of differences by our principals if we are unsuccessful.

~~SECRET~~